

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

v.

GREGORY COLBURN et al.,

Defendants.

Case No. 1:19-cr-10080-NMG

**DEFENDANTS' MOTION TO ADMIT EXHIBIT 1219  
AS STATE OF MIND EVIDENCE**

The government continues to make baseless hearsay objections in this case. **Today, the government convinced the Court to commit legal error by denying the admission of Exhibit 1219 as evidence of the knowledge and state of mind of Scott Simon and Donna Heinel. The repeated objections to the admission of this document are depriving the Defendants of their constitutional right to present their defense.**

The relevant excerpt of the document is just two pages—it shows Scott Simon, **the Associate Vice President for the Office of Athletic Compliance** sending an email to **Donna Heinel (the defendant's alleged co-conspirator)** containing a spreadsheet with a roster analysis. The spreadsheet states that for the Men's Golf team, "Significant donor's son on roster. Practices only. Unique scenario for this year." For the Men's Tennis team, it says "Two significant donor's sons on roster. Practice only. Unique scenario for this year." There is no need for mini-trials or to get into the particulars of any student, or to name any student. Defendants just want to show the jury that the Associate Vice President for Athletic Compliance at USC (Mr. Simon) sent an email to Ms. Heinel showing that USC had donors' children as practice players on their rosters.

The undersigned filed a motion yesterday suggesting how the two-page excerpt should be admitted as a business record (with the testimony of a record-keeper, Mr. Simon, or Mr. Simon's assistant). That Motion also discussed the document's relevance, and how it directly impeaches Ms. Chassin's testimony. See Dkt. 2286.

The document can also be admitted as it was proffered today, as state-of-mind evidence for Mr. Simon and Ms. Heinel and to show the knowledge of Mr. Simon and Ms. Heinel. Whether or not there were practice players on the Golf or Tennis teams, the document shows Ms. Heinel received an email from the head of compliance showing that there were. One of the main issues in this case is whether the Defendants conspired with others (including) Ms. Heinel to deprive USC of its honest services. It is highly relevant to Ms. Heinel's state of mind that she was sent an email from the head of compliance showing that rosters were expanded to accommodate practice players who were the children of donors.

**The government chose to charge a conspiracy and must deal with the fact that the conspirators' state of mind is therefore relevant.** The defendants have a plethora of evidence showing that Heinel was doing what was expected of her (pre July 2018), but so far the Court has not permitted any of this evidence to be admitted. *See* Offer of Proof, Dkt. 2292. The Court should—at the very least—admit this single two-page document in evidence. The jury can judge the weight of the document for itself.

The government's suggestion today that the document cannot be admitted because "this is an irrelevant document and this witness has never seen it," 205:5-6, is baseless. If the document is authentic (it has been pre-authenticated through stipulation) then there is simply no need for a witness to testify to its authenticity. If it is relevant (it is) and within a hearsay exception (it is), it must be admitted. If the government's rules applied, then Special Agent

Brown was improperly reading emails he had nothing to do with for nearly the entirety of his testimony.

Dated: September 28, 2021

Respectfully submitted,

GAMAL ABDELAZIZ

By his attorneys,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically on September 28, 2021, and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing.

/s/ Joshua C. Sharp  
Joshua C. Sharp